Supreme Court, U. S.
FILED
AUG 18 1975
MICHAEL RODAK, JR., CLERK

No. 75-253

In the

Supreme Court of the United States

OCTOBER TERM, 1975

CLARE HARTE, on her own behalf and on behalf of all citizens and taxpayers of Cook County, Illinois,

Plaintiff-Petitioner,

vs.

ROBERT J. LEHNHAUSEN, Former Director of the Department of Local Government Affairs, State of Illinois: MICHAEL J. BAKALIS, Superintendent of Public Instruction, State of Illinois; and FRANK A. KIRK, Director of the Department of Local Government Affairs, State of Illinois,

Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois entered in this case on May 19, 1975.

OPINION BELOW

The Opinion of the Supreme Court of Illinois is reproduced in Appendix "A" *infra*. This Opinion is reported at 60 Ill.2d 542, 328 N.E.2d 543. The Opinions and Orders

of the Trial Courts are reproduced as Appendices "B" and "C" *infra*. These Opinions are not reported.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on May 19, 1975. No petition for rehearing was filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254.

QUESTIONS PRESENTED FOR REVIEW

1. Whether principles of Equal Protection guaranteed by the United States Constitution are violated where property is equalized—for purposes of taxation and ultimately for apportioning school aid to school districts throughout the State—at 50% in Cook County and at 45%, 43% or even 36% in other counties of the State.

2. Whether it was error to turn petitioner away without any relief whatsoever where:

A. The pleadings—the well-pleaded facts of which are admitted—allege intentional misconduct by State officials designed to deprive plaintiff and other citizens and taxpayers of Cook County of their fair share of the State Common School Fund;

B. Agents of the accused Department have admitted under oath the misconduct complained of;

C. The Governor of the State of Illinois has admitted the truth of all of the essential allegations of the complaint;

D. The trial court and the Supreme Court of Illinois acknowledged that the misconduct complained of occurred and resulted in depriving petitioner and

other citizens and taxpayers of Cook County of their constitutional right to equal treatment in the distribution of funds from the Common School Fund;

E. There is no evidence in the Record and no facts stated to support any conclusion that the requested relief or any other relief was impossible, impracticable or even difficult to administer. On the contrary, the evidence established that the requested relief would be quite simple to administer.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 149 of the Revenue Act of the State of Illinois, Ill. Rev. Stat. Ch. 120, par. 630, provides in pertinent part:

> The assessments of all property, as returned by the county clerks, shall be equalized by adding to the aggregate assessed value thereof in every county in which the Department may find the valuation to be less than full, fair cash value, such rate per cent as will raise the same to its full, fair cash value * * * and by deducting from the aggregate assessed value thereof, in every county or township in which the Department may find the valuation to be more than full, fair cash value, such rate per cent as will reduce the same to its full, fair cash value.

STATEMENT OF THE CASE

This case was before the Supreme Court of Illinois upon appeal from an order of the Circuit Court of Cook County granting defendants' Motion to Dismiss. For this reason all facts well-pleaded were taken as true. Moreover, prior to the order of dismissal by the trial court, an extensive hearing was held before another judge of the trial court on plaintiff's Motion for a Preliminary Injunction. In that hearing all of the facts alleged were admitted under oath by the employees of the defendant State agencies. In addition, in its Opinion affirming the dismissal of the case the Supreme Court of Illinois expressed its agreement with the facts as alleged by Petitioner.

This taxpayer's action is brought by plaintiff Clare Harte ("Petitioner") on her own behalf and on behalf of all citizens and taxpayers within the County of Cook, State of Illinois. It involves the alleged and admitted manipulation and distortion by State officials of a State property tax "equalization factor"—a device to equalize property tax assessments among the 102 counties of the State as explained below.

The principal purpose of the equalizer is to insure uniform and equal treatment to taxpayers particularly with respect to the distribution of funds from the Common School Fund. Any adjustment of the equalizer for any county may have a drastic effect upon the share of assistance received by school districts within that county from the State Common School Fund. Thus, as alleged, in most counties an illegally low equalizer was intentionally assigned to increase the State's contribution to school districts in those preferred counties.

In her two count Amended Complaint petitioner alleged that defendant Robert J. Lehnhausen ("Lehnhausen"), the

Director of the Department of Local Government Affairs for the State of Illinois during the years 1970 through 1972, either intentionally or negligently failed to correctly compute, determine and certify the equalization rate for Cook County, as required by law, Ill. Rev. Stat., ch. 120, pars. 630 and 632, but overstated the equalizer for these years. (R.C. 15-16)

Count II of the complaint alleges that the defendant Frank A. Kirk, the present Director of the Department of Local Government Affairs ("Kirk"), continued the lack of uniformity by certifying the same overstated equalizer for the year 1972 through an arbitrary "freeze" order. (R.C. 19)

The equalization rate determined by the Director is used to compute total equalized assessed valuation for purposes of determining each school district's appropriate share from the common school fund. Specifically, to be eligible for the basic state grant of $520 per child, the local school district must levy a tax of $1.08 per $100 assessed valuation as equalized. (Virtually all school districts levy more, but the $1.08 figure is the essential qualifying constitution to the basic grant of $520). (R. 157) After that contribution by the local school district, the remainder of the $520 comes from the common school fund. (*E.g.*, if the levy of $1.08 raised $200 per child, the State grant from the common school fund would equal $320 per child.) If the assessed valuation as equalized is overstated, the qualifying share is higher and the State's contribution is less.

The complaint alleges that as a result of the conduct of defendant Lehnhausen in his intentionally and/or negligently failing to correctly compute and certify the equalization rate for Cook County, the school districts in Cook County have not received their correct share of aid from

the State common school fund. Petitioner further alleges that because of these facts, she and other Cook County taxpayers have been required to pay increased real estate taxes to make up their loss of aid from the state fund. The conduct of defendants is alleged to violate the Constitutional rights of plaintiff and other taxpayers and the statutes of Illinois which require uniformity in treatment among taxpayers.

The Amended Complaint was filed on April 2, 1973. In Count I petitioner prayed that the Court order a recomputation of school aid based on a corrected equalization rate for the years 1970 and 1971. (The 1970 and 1971 equalization rate would be used to determine State school aid in June 1972 and June 1973 respectfully. (R. 159) Adjustments are often made after this distribution is completed. (R. 161)

In Count II petitioner sought to enjoin Kirk from certifying the same equalization rate for the year 1972 and to enjoin State School Superintendent Bakalis from using this equalization rate for computing distributions from the Common School Fund for any school district in Cook County. (The 1972 rate would not be used by Bakalis until June 1974.) (R. 159)

Prior to the certification of the 1972 equalization factor by defendant Kirk petitioner filed a Motion For Preliminary Injunction. At this time the defendants argued that the cause should be dismissed for failure to state a cause of action. (R. 66-71) This motion was denied and the Court proceeded to hear evidence on plaintiff's motion. At that hearing, witnesses employed by the defendants admitted virtually all of the allegations of the complaint. The evidence also revealed that the defendant Lehnhausen not only intentionally manipulated the equalization factors—using one formula for Cook County and a different (more

favorable) formula for all other counties, but also caused official records of the Department to be altered. (R. 83) The purpose and effect of this conduct was to arbitrarily reduce the assessments of other counties by comparison with Cook County so that these counties would get preferential treatment in the computation of school aid from the Common School Fund.

The trial court denied petitioner's Motion For Preliminary Injunction solely for the reason that the motion requested a recomputation and withdrawal of the 1972 equalization factor which was about to be used by local taxing officials to issue 1972 real estate tax bills. The Court found that this would not be an appropriate remedy because the recomputation of the equalization rate at that time would require a delay in processing of the 1972 tax bills. The Court did not reach the ultimate prayer of the complaint which seeks a recomputation of *school aid*. (App. C, pp. 12a-16a) The evidence at that hearing on the Motion For Preliminary Injunction established that the requested recomputation could be done at any time and that in fact the 1972 equalizer which was about to be used for 1972 tax bills would not be used for the computation of school aid until June 1974. (R. 159)

The ultimate issues in the complaint came on for trial before another judge of the Circuit Court. Prior to trial, that judge heard further arguments of the parties on the defendants' Motion to Dismiss and granted defendants' Motion to Dismiss the Amended Complaint. (App. B, pp. 10a-11a) Petitioner then took a direct appeal to the Illinois Supreme Court.*

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* A direct appeal was authorized by the Court pursuant to its rules, Ill. Rev. Stat., Ch. 110A Sec. 302(b).

Upon appeal, the Illinois Supreme Court agreed with petitioner that the defendants were guilty of "nonfeasance" and "utter disregard" of their "duties to equalize assessments," and that this utter disregard of their statutory duties to afford all taxpayers equal treatment, resulted in petitioner and other taxpayers in Cook County receiving less than their fair share of funds from the Common School Fund. (App. A, pp. 8a-9a)

However, the Court refused to grant any relief whatever for the admittedly inequitable treatment suffered at the hands of these state officials. The Supreme Court affirmed the judgment of the trial court dismissing the amended complaint because it found that in its opinion no relief was feasible under the circumstances of this case. (App. A, pp. 8a-9a) Because the case came on for hearing on a Motion to Dismiss, there was no evidence in the Record to support the conclusion that there was no feasible remedy available under the circumstances. On the contrary, at the hearing on the Motion for Preliminary Injunction, one of the defendants, a Supervisor in the office of the Superintendent of Public Instruction, stated that the recomputation of school aid could be done quite simply on a computer and within a matter of a few days. (R. 159)

REASONS FOR GRANTING THE WRIT

Preliminary

This case is unique, perhaps even startling. Here a plaintiff representing taxpayers in a county which comprises almost one-half the population of the State of Illinois has charged that State officials have arbitrarily and intentionally computed the school aid formula in a manner which deprived the taxpayers of this large county of their fair and equal share of funds from the Common School Fund. The amount of the loss to Cook County taxpayers is staggering—estimated by petitioner to be at least $30 million per year. The trial court found that such allegations of a denial of Equal Protection did not state a cause of action. (App. B, pp. 10a-11a)

Upon appeal to the Supreme Court of Illinois, that Court expressed its outrage over the "utter disregard" by the State officials to perform their duties to treat all taxpayers equally. The Court also noted that the issues raised in this case "are the direct result of the failure of governmental officials to perform their duties in the manner prescribed by law." (App. A, 9a)* [In another case the Court also noted that the fight for fair and equal treatment from this State agency has been going on for a decade without any reform by the agency or relief from the courts. *Hamer* v. *Lehnhausen*, 60 Ill. 2d 400, 328 N.E.2d 11 (1975)] The Court denied any relief however because it concluded—although no facts are stated

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* Although the case came on for hearing in the Supreme Court on a Motion to Dismiss—which admits all facts well-pleaded—there were facts in the Record which fully supported the allegations of the complaint. In a hearing on a Motion for Preliminary Injunction, government officials admitted most of the allegations in the complaint.

and no facts are found in the Record to support the conclusion—that there was no available remedy to rectify the unconstitutional and discriminatory treatment suffered by Cook County taxpayers. (App. A, 9a)

This conclusion totally ignored the evidence in the record which was presented at a hearing on petitioner's Motion for Preliminary Injunction. There it was established that the recomputation of a correct equalization factor—using the same formula as used for the majority of counties—was a simple task. An employee of the Department of Local Government Affairs made the computations while on the witness stand. He testified that if he used the same formula for Cook County that he used for others in 1970, Cook would have been assigned an equalization rate of 1.38 instead of the assigned 1.59. He also testified that the 1971 rate, using the "uniform" formula, would have been 1.47 instead of 1.59. (R. 310-11) Another witness, from the Office of the Superintendent of Public Instruction, testified that the recomputation of school aid due school districts in any given county using a different equalization rate than that originally assigned "would be a relatively easy thing" and that his office "could probably do it in a couple of days." (R. 159)

Petitioner respectfully submits that in the context of this record it is incredible for the Illinois Supreme Court to deny relief, particularly when viewed in the light of this Court's many decisions which teach that where a denial of constitutional rights is shown, our courts must fashion some form of relief if at all possible. Surely if trial courts can redistrict state and congressional legislative districts, apportion water rights between states, and supervise the integration of public facilities, a trial court can oversee the simple computation required for the relief prayed for in this case.

I.

THE DISCRIMINATORY METHOD OF COMPUTING THE EQUALIZATION RATE AND APPORTIONING AID FROM THE COMMON SCHOOL FUND FOR COOK COUNTY CLEARLY VIOLATES THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION AND PETITIONER IS ENTITLED TO RELIEF.

In her complaint petitioner alleges that she and the other taxpayers of Cook County were singled out by the defendants in the Department of Local Government Affairs for discriminatory treatment. The allegations of the complaint clearly alleged that these defendants ordered that one formula be used to compute the equalization factor for Cook County and an entirely different formula—a more favorable formula—be used for other counties of the State. The net effect of this conduct was to arbitrarily reduce assessments in other counties by comparison with Cook so that these other counties would get preferential treatment in the computation of school aid from the Common School Fund. The result of this arbitrariness is well summarized in a Memorandum by an official of the Department and produced from the defendants' files at the hearing on petitioner's Motion For Preliminary Injunction:

> Based on the foregoing, it becomes evident that the procedures followed by the Department in determining factors for township counties in the assessment year 1971 *did not produce inter-county uniformity in assessment levels.*
>
> In some of the counties receiving factors in excess of 100% and negative multipliers, the factor as certified was below that computed for these counties. *In several counties of the State, we were ordered to prepare factors for which there was no method given for adjustment of assessment levels to account for the factors certified in these counties.*

> *Inasmuch as State grants in aid for schools,* grants in aid for public assistance, as well as certain other grants *are based on qualifying rates, it is imperative that the assessment levels in each county be at as nearly the same level as possible* if these qualifying rates which, when applied to the equalized value based on the factor certified by the Department, are to be as meaningful in one county as in another county in the State. (Emphasis supplied.)*

Prior to this action by the Department, petitioner filed a Motion For Preliminary Injunction. The hearing on the motion resulted in a record which disclosed an incredible story of intentional manipulation and discrimination by State agents.

The Supervisor of the Department responsible for the computation of the equalizer explained that for the year 1970 a formula was used which resulted in assessments being equalized at 43.5% or less rather than 50%—for almost all counties of the State except Cook. (R. 70-89) The same official testified that for 1971 a formula was used which resulted in assessments being equalized at 45% or less for that year. (R. 91-93) This official stated that in his opinion, this procedure for determining the equalization factors *did not result in intercounty uniformity.* (R. 90, 93) This official testified that if the general down-state formula were applied to Cook County, it would have yielded equalization factors of 1.38 in 1970 and 1.47 in 1971. (R. 310-11) In both years the assigned equalization factor for Cook County was 1.59. It is undisputed therefore that the actual 1970, 1971 and 1972 multipliers assigned to Cook County were higher than

* This exhibit is reproduced in full as Appendix D to this Brief. (App. 17a-21a)

they would have been had the same formula used for other counties generally been applied to Cook. Petitioner has estimated that the result of this discrimination has cost school districts in Cook County at least 30 million dollars per year.

Defendant Frank Kirk, the present Director of the Department, testified that when he assumed office after the term of Lehnhausen he investigated the assessment levels of the various counties *and found that the uniformity requirements had been violated.* (R. 28-29) (Assessment levels ranged from 36% to 52% with an average of 45%.) He then admitted that he ordered this lack of uniformity frozen into the 1972 equalization factors. (R. 29)

The Governor of the State issued a press release expressing his outrage over the lack of uniformity and discrimination perpetrated by the prior Administration. He then agreed to the Kirk "freeze order" which continued the discrimination. (The Governor's Press Release is attached as Appendix E to this Brief, pp. 21a-23a)

Other officials testified that in computing the equalization factors for the years 1970 and 1971 they were attempting to give *"tax relief" to counties other than Cook.* (R. 418-19) This tax relief of course is in the form of excess school aid because the formula is used for distributing funds held in the Common School Fund.

It is significant that the defendants never challenged the startling allegations of intentional discrimination set forth in the complaint. They remained undaunted when witnesses, employees of the Agency itself, candidly admitted that the Department adopted and implemented an

intentional scheme of discrimination aimed at the taxpayers of Cook County. The position of the defendants in this litigation, which has been adopted by the trial court and the Supreme Court of Illinois, is simply that notwithstanding the fact that most school districts and taxpayers in the State received certain preferred treatment, Petitioner has no remedy in the Courts of Illinois.

Petitioner respectfully submits that under our laws and the Constitution of the United States she is entitled to judicial relief to obtain the same benefits and uniformity of treatment afforded others. That remedy in this case is to increase the State's contribution to school districts in Cook County by ordering that the same formulae be used for Cook County as that used for the other counties during the years in question. This position has been unequivocally sustained by numerous decisions of this Court which hold that every taxpayer and citizen is entitled to equal treatment and when certain taxpayers are given a benefit by the State, that benefit must be extended to all taxpayers alike. In short, it is the duty of the *State* to remove any discrimination in the process. In *Township of Hillsborough* v. *Cromwell,* 326 U.S. 620 (1946), this Court confronted this very issue in a declaratory judgment action which challenged New Jersey procedure which required that a taxpayer singled out for discriminatory treatment could only proceed against other members of his class for the purpose of having their taxes increased. In other words, where a taxpayer is taxed precisely as required by statute, but all other taxpayers similarly situated receive preferential treatment, the injured taxpayer could not request uniform treatment but could only sue the other taxpayers to have their taxes increased to the statutorily required level. This Court rejected this theory in unequivocal terms.

> The equal protection clause of the Fourteenth Amendment protects the individual from state action

> which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class. (326 U.S., at 623.)

In *Sioux City Bridge* v. *Dakota County,* 260 U.S. 441 (1923), the same principle was applied where a bridge company was assessed at 100% of its true value while all other property in the county was assessed at 55%. In that case the Nebraska Supreme Court held that the taxpayers' remedy was to have any other property assessed below true value raised to its proper value. Again this Court rejected this theory.

> . . . The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage in violation of the law, has been often dealt with by courts and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the federal courts in the enforcement of the uniformity clauses of state statute and constitutions and of the equal protection clause of the Fourteenth Amendment.
>
> . . . This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are

> taxed even though this is a departure from the requirement of statute. (260 U.S. at 446)

Again in *Cumberland Coal Co.* v. *Board of Revision,* 284 U.S. 23, 28-29 (1931), this Court, relying on the *Sioux City Bridge Company* case, held that an assessment should be reduced to the percentage of that value to which others are taxed *even though this reduction would result in a departure from statute.* See also *Iowa-Des Moines National Bank* v. *Bennett,* 284 U.S. 239, 247 (1931); *Chicago Great Western Ry.* v. *Kendall,* 266 U.S. 94, 98 (1924); and *Levy* v. *Parker,* 346 F.Supp. 897 (affm. three judge court) 411 U.S. 978 (1972).

The Illinois Courts have often restated these same propositions. See, for example *People's Gas, Light and Coke Co.* v. *Stuckart,* 286 Ill. 164, 121 N.E. 629 (1918) and *People ex rel Tedrick* v. *Allied Oil Corp. of Illinois,* 388 Ill. 219, 57 N.E.2d 859, 861 (1944).

The essence of the above opinions of this Court is that all taxpayers and citizens are entitled to a uniform application of the laws and it is no answer to a charge of discrimination that the aggrieved citizen paid only his due tax as set forth in a statute. Applying these principles to this case, these cases teach us that Cook County taxpayers have a right and valid claim to receive the same treatment afforded the preferred taxpayers in other counties, i.e., that their proper share of school aid should be computed in the same manner that aid was computed for the preferred counties.

II.

A CLEAR AND FLAGRANT VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS HAVING BEEN ADMITTED, PETITIONER'S COMPLAINT STATED A JUSTICIABLE CAUSE OF ACTION. THERE ARE ADEQUATE AND PRACTICAL REMEDIES AVAILABLE AND THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE CONCLUSIONS OF THE SUPREME COURT OF ILLINOIS THAT THERE IS NO PRACTICAL REMEDY AVAILABLE.

The Trial Court's Dismissal

The trial court dismissed the case after first finding that property in Cook County was equalized at 50% of market value—the statutorily required rate. The trial court then concluded that the rights of Cook County taxpayers were not violated because Cook County property was equalized as required by the Revenue Act of Illinois. The court totally disregarded the constitutionally guaranteed right of every taxpayer to fair and equal taxation as discussed in *Sioux City Bridge* v. *Dakota County, Nebraska,* (supra); *Iowa Des Moines National Bank* v. *Bennett,* (supra); *Township of Hillsborough* v. *Cromwell,* (supra); *Cumberland Coal Company* v. *Board of Revision,* (supra) and a legion of Illinois cases which require uniformity in treatment in taxation. See for example, *People's Gas, Light & Coke Company* v. *Stuckart,* (supra); *People ex rel Tedrick* v. *Allied Oil Corp. of Illinois,* (supra). In the last cited case, the Illinois Supreme Court stated, citing this Court's Opinion in *Sioux City Bridge Company* v. *Dakota County, Nebraska*:

> It is true the statute requires that property must be assessed at its fair cash value; however, it is the constitutional right of a taxpayer whose property is assessed at its fair cash value, to have his assess-

> ment reduced to the percentage of that value at which the property of others is assessed generally in the taxing district. The constitutional requirement of uniformity in taxation is controlling in statutes pertaining to taxation must yield thereto. (388 Ill., at 222)

In light of these clear authorities, the order of the trial court dismissing the case for want of jurisdiction was clearly erroneous. As this Court observed in its landmark reapportionment case, *Baker* v. *Carr*, 369 U.S. 186, 199 (1962):

> The complaint alleges that the 1901 Statute affects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment. Dismissal of the complaint upon the ground of lack of jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit". *Newburyport Water Company* v. *Newburyport*, 193 U.S. 561, 579, or "frivolous". *Bell* v. *Hood*, 327 U.S. 678, 683.

The same principles apply to an Illinois Court confronted with the allegations of violations of constitutional rights as asserted here. Not only were the constitutional claims not "frivolous"—here they were serious, clear and admitted by most of the principals involved. The Supreme Court of Illinois, in its review of this case, acknowledged the clear and convincing case made by Petitioner. It is therefore clear that the complaint in this case stated a cause of action justiciable in the Courts of Illinois.

The Supreme Court of Illinois Decision

Upon review the Supreme Court of Illinois affirmed the trial court's dismissal of the complaint. In doing so, however, the Court did not adopt the reasoning of the trial court, to wit: that the complaint did not state a justiciable cause of action because County taxpayers were taxed at the lawful rate. Indeed, the Illinois Supreme Court rejected this argument in another case decided just a few weeks prior to this case. See *Hamer* v. *Lehnhausen*, 60 Ill.2d 400, 328 N.E.2d 11 (1975)

The Court appears to have concluded that petitioner's action should be dismissed without even a hearing on the merits because there was no adequate remedy available to rectify the admitted violation of constitutional rights. This conclusion as to the unavailability of any adequate remedy was made without support of any evidence in the Record.

In its decision the Supreme Court acknowledged that the allegations of the complaint adequately alleged a violation of constitutional rights. Its conclusion in this regard was unequivocal. First, it stated:

> We agree with plaintiff that there is no apparent justification for the utter disregard of the Department of Local Affairs of the statutory mandate to equalize assessments in all counties of 50% of fair cash value. (App. A, 8a)

The Court then emphasized that the "inequity is accentuated in this case by the fact that Cook County contains roughly one-half of the total population of the State." (App. A, 8a) In the course of its opinion the Court repeatedly commented on the "failure . . . of assessing authorities to implement the statutory system . . . de-

signed to achieve uniformed equalized assessments" and the "nonfeasance" and "failure of government officials to perform their duties in the manner prescribed by law." (App. A, 8a-9a) Notwithstanding these facts and the Court's repeated expressions of righteous indignation, the Supreme Court of Illinois concluded that, *in its opinion* without any supporting evidence in the Record, there was no judicial solution to the "problems" raised by Petitioner's complaint.

Petitioner respectfully submits that the judgment of the Supreme Court of Illinois in this case represents a total abdication of the responsibilities of that Court to provide a remedy where available for a violation of constitutional rights. As shall be shown below, there is no basis in law or fact for the conclusions of the Court of the unavailability of a remedy for the wrongs complained of. There was no evidence in the Record as to these facts. More importantly, the evidence presented by petitioner in the hearing on a Motion for Preliminary Injunction indicates that there is a clear and simple remedy available. This remedy was rejected by the Supreme Court, based on conclusions and opinions unsupportable in the Record of this case.

The Illinois Supreme Court expressed certain considerations which supposedly support, its "opinion" that it would not be feasible to grant relief in this case. Petitioner respectfully submits that none of these considerations support the conclusion of the Court that no relief is available. Each of the considerations are discussed below.

1. The Court stated that, in its opinion, "It would be completely inappropriate to direct the Superintendent of

Public Instruction to distribute school aid in a manner contrary to law in order to remedy the mistakes of other governmental departments which have ignored the law." (App. A, 8a)

The Court states no facts to support its opinion that the proposed redistribution of school aid would be "inappropriate" or even contrary to law. While the statutes require the Superintendent of Public Instruction to distribute school aid pursuant to a formula which includes the equalizer as supplied by the Department of Local Government Affairs (Ill. Rev. Stat., Ch. 122, par. 18-8), these statutes presume that the responsible State officials computed a fair and accurate equalizer. It is inconceivable that, in devising the school aid formula, the Legislature intended that the Superintendent of Public Instruction would use an equalizer which is known and acknowledged by all to be false and fraudulent. The basic statutes provide that school aid is to be distributed based on *properly* computed assessed valuations. The method of distributions suggested by plaintiff—using the same formula as used in other counties—would result in the distribution of school aid in a manner consistent with the statutes and definitely not "contrary to law" as suggested by the Supreme Court.

More importantly, even if the only available remedy required the distribution of school aid in a manner inconsistent with the relevant State statutes, it is a well established principle that State statutes are not to be followed where necessary to protect constitutional rights. Indeed in the opinion of the Illinois Courts in *Tedrick* v. *Allied Oil Corp.*, (supra), the Illinois Court, citing this Court's opinion in *Sioux City Bridge Co.* v. *Dakota County, Nebraska,* (supra) noted that: *"The constitutional require-*

ment of uniformity in taxation is controlling and statutes pertaining to taxation must yield thereto." (Emphasis supplied) (388 Ill., at 222).

Surely this principle is demonstrated in every term of this Court where State agents are required *not to follow* State statutes dealing with every conceivable subject from legislative districting to abortions, where to follow the statute would result in a violation of constitutional rights.

2. The Court stated that to utilize one multiplier (or equalizer) for purposes of taxation and a different one for other purposes such as computing school aid would not resolve the fundamental problem—the failure of assessing authorities to implement the statutory system to achieve uniform assessments. (App. A, 8a, 9a)

This statement is erroneous and short-sighted. The purpose and use of the multiplier was recently explained in a report of a Joint Legislative Committee of the Illinois General Assembly, "The Illinois Property Tax System: Problem And Promise, Report of the Joint Subcommittee To Study The Property Tax":

> The multiplier, or equalization, system was introduced to equalize assessments throughout Illinois, primarily to achieve equity between taxpayers and to insure an equal distribution of certain State funds related to the property tax, particularly the school aid funds. In addition to school aid, the State distributes funds, at least partially based on property assessments, for tuberculosis treatment, public assistance, and distribution of motor fuel taxes to counties, townships, road districts and municipalities. Theoretically, the multiplier also is supposed to insure that taxpayers living in different *assessing* districts (such as separate townships and/or counties) comprising one *taxing* district (such as a multi-county school or junior college district) will pay "equal" taxes in relation to the value of their particular property. (at pp. 4-5)

In terms of taxpayers' rights, the single most important function of the equalizer is the distribution of aid from the Common School Fund. For that reason the use of one equalizer for purposes of taxation and a different one for computing school aid *does much to resolve the fundamental problem.* Insofar as petitioner and the other taxpayers of Cook County are concerned it would practically resolve the fundamental problem in total.

3. The Court stated that petitioner's proposed remedy does not alleviate other problems in other areas such as public aid arising from this nonfeasance. (App. A, 9a)

Admittedly, petitioner's proposed remedy (recomputation of school aid) will not alleviate or remedy petitioner's loss of public assistance and perhaps certain other funds lost to petitioner by the misconduct of these State officials. As explained above, the proposed relief will repay for *most of the suffered loss.*

In offering this "consideration" to support its opinion that no relief is available, the Illinois Court seems to be saying that petitioner and other taxpayers should get no relief because they are entitled to more.

4. Petitioner's suggested remedy would compel taxpayers in certain other counties to contribute portions of their sales and income tax payments to make up the amount petitioner claims due to Cook County School Districts. (App. A, 9a)

Payments from state funds are often required to protect constitutional rights. If taxpayers in any of these

other counties were likewise victims of the defendants' misconduct they should pursue their relief in the courts as petitioner has done.

Significantly, in its opinion the Court acknowledged that this "consideration" was not of major "significance" in the context of this case. (App. A, 90) Petitioner respectfully submits that it is of *no significance.*

5. Because the problems presented in this case are the result of the failure of government officials to perform their duties as required by law, the problems "do not lend themselves to judicial solution." (App. A, 9a)

Petitioner respectfully submits that in this sweeping conclusion the Supreme Court of Illinois attempts to repeal our entire history of constitutional government. It has been established since *Marbury* v. *Madison,* 1 Cranch 137, 2 L.Ed. 60 (1803), that relief from such misconduct is in the courts. In short, where it is alleged that the failure of governmental officials to perform their duties by law—and where government officials violate the constitutional rights of our citizens—these problems do lend themselves to judicial solution. Indeed these problems in many respects are the reason our courts were created.

6. The remedies sought may cause such additional difficulty, delay and expenses to make their use impracticable. (App. A, 9a)

The Court did not state any such difficulties, delays or expenses which would be related to the remedy sought. The expert testimony in the office of the Superintendent of Public Instruction shows that the proposed relief was simple, expedient and inexpensive and could be completed on a computer within a matter of days. (R. 151)

Significantly, the Court offered no facts to support this conclusion. It cited only the trial court's denial of the Preliminary Injunction. However, in denying the Preliminary Injunction the trial court was talking about delays and expenses in issuing property tax bills. For that reason the Court would not order withdrawn the 1972 multiplier just prior to the issuance of 1972 tax bills. That Court then set the ultimate issue for trial. (App. C, 16a) Implicit in this action was the fact that this relief—the recomputation of school aid—was not impracticable and did not involve unreasonable difficulties, delays or expenses.

This conclusion is clear from the record:

> [The Court]
> For these reasons the Court denies in its entirety the Plaintiff's petition for preliminary injunction. You can prepare an order accordingly.
> Mr. Harte [Petitioner's Counsel]: If I understand, it does not reach the other prayers for relief on a recomputation as the case goes ahead, is that correct?
> The Court: That is right.
> Mr. Harte: The Court does not reach that question." (App. C, 16a)

In short, there is nothing in the record to support the conclusions of the Illinois Supreme Court that the relief requested is in any way impracticable. Rather, as petitioner has illustrated above and as agents of the Superintendent of Public Instruction have testified, the relief requested in this case is simple and appropriate. In commenting on the duty of our courts to enforce constitutional right (in that case the right to equal representation in a State legislature), former Justice Tom Clark stated:

> National respect for the courts is more enhanced through the forthright enforcement of those rights rather than by rendering them nugatory through the interposition of subterfuges: In my view the ultimate decision today is in the greatest tradition of this Court. (*Baker* v. *Carr,* 369 U.S. 186, 262) (Concurring Opinion)

Those comments apply equally here.

In another concurring opinion in that case it was also stated:

> It is said that any decision in cases of this kind is beyond the competence of courts. Some make the same point as regards the problem of equal protection in cases involving racial segregation. Yet the legality of claims and conduct is a traditional subject for judicial determination. Adjudication is often perplexing and complicated. An example of the extreme complexity of the task can be seen in a decree apportioning water among the several States. *Nebraska* v. *Wyoming,* 325 U.S. 589, 665. The constitutional guide is often vague, as the decisions under the Due Process and Commerce Clause show. The problem under the Equal Protection Clause is no more intricate.

In the past this Court has not hesitated to condemn State practices that deny equal protection, *Moore* v. *Ogilvie,* 394 U.S. 814 (1969); *Shapiro* v. *Thompson,* 394 U.S. 618 (1969); nor hesitated to strike down entire schemes of taxation which were violative of the Equal Protection Clause. *F. S. Royster Guano Co.* v. *Commonwealth of Virginia,* 253 U.S. 412 (1920).

When necessary this Court has taken extraordinary steps to protect every citizen's right to Equal Protection. Recently in *Swann* v. *Charlotte-Mecklenburg Board of*

Education, 402 U.S. 1, (1971), this Court was called upon to fashion remedies which included the exercise of the Court's historic remedial powers. In order to achieve the goal of Equal Protection, this Court approved busing of students, altering of attendance zones, and the limited use of quotas to achieve racial equality.

In other cases, trial courts have been required to redistrict state legislatures and even to divide water between states. *Nebraska* v. *Wyoming,* 325 U.S. 589, 665 (1945). The trial courts of our Nation have demonstrated remarkable flexibility and imagination in administering relief in the most complex cases.

By contrast to the more complicated cases, the relief sought to be administered in this case is uncomplicated and can be expeditiously administered. As stated above, one witness computed the correct equalizer for Cook County for each of the years in question with a pocket-size calculator. Another witness admitted that these adjustments could be made in a simple manner within a few days. There is absolutely nothing in the Record to support the conclusions of the Supreme Court of Illinois that no relief was practicable. It would seem from a constitutional standpoint that before such a conclusion could be reached, there should be at the very least a hearing in the trial court where petitioner would have an opportunity to dispute the conclusions reached by the Supreme Court without the support of any evidence from the lower Court Record.

Petitioner respectfully submits that if the opportunity is given, she can and will adequately demonstrate that there is adequate relief available to grant full relief for the admitted denial of constitutional rights in this case.

CONCLUSION

For the reasons set forth here and above, petitioner respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX A

Opinion of the Supreme Court of Illinois

Docket No. 46533—Agenda 19—January, 1975.

CLARE HARTE, Appellant, v. ROBERT J. LEHNHAUSEN *et al*, Appellees.

MR. CHIEF JUSTICE UNDERWOOD delivered the opinion of the court:

Plaintiff, on her own behalf and for all citizens, taxpayers and taxing bodies in Cook County, filed an amended complaint for declaratory judgment and injunction against the former and present Directors of the Department of Local Government Affairs and the Superintendent of Public Instruction. She sought a recomputation and adjustment of payments to Cook County school district from the State common school fund for 1969 through 1971. She also sought to enjoin the certification of the 1972 equalization rate (commonly referred to as the "multiplier") for Cook County by the Department of Local Government Affairs and the distribution of State school aid on the basis of that rate. Plaintiff's motion for preliminary injunction was denied, and the Circuit Court of Cook County subsequently allowed defendants' motion to dismiss the amended complaint. We have allowed plaintiff's motion for direct appeal pursuant to Supreme Court Rule 302(b). 50 Ill.2d R. 302(b).

The case involves the interrelationship of the equalization of assessments of property in the various counties by the Department of Local Government Affairs and the apportionment of school aid from the State common school fund to school districts throughout the State. A brief review of the pertinent statutory provisions is required. The Revenue Act of 1939 provides that except in counties with a population of more than 200,000 which classify real

property for purposes of taxation, property is to be valued for taxation at "fair cash value," which is defined as 50% of actual value. (Ill. Rev. Stat. 1971, ch. 120, pars. 482(24), 501.) The Department of Local Government Affairs is directed by statute to equalize assessments between the counties so that in all couunties property will be assessed at its full fair cash value as defined by the Act. (Pars. 612, 627.) To this end, section 149 of the Act provides in part that:

> "The assessments of all property, as returned by the county clerks, shall be equalized by adding to the aggregate assessed value thereof in every county in which the Department may find the valuation to be less than full, fair cash value, such rate per cent as will raise the same to its full, fair cash value * * * and by deducting from the aggregate assessed value thereof, in every county or township in which the Department may find the valuation to be more than full, fair cash value, such rate per cent as will reduce the same to its full, fair cash value." (Par. 630.)

The rate so determined by the Department to arrive at such equalization is then certified by the Department to each county clerk, and the equalized valuations resulting from applications of the multiplier to the locally assessed valuations are used by the respective county clerks in extending taxes. (Par. 632.)

The School Code utilizes equalized assessed valuation in determining a school district's qualification to receive grants from the common school fund. Section 18-8 of the Code contains detailed provisions dealing with the apportionment of various types of State school aid. (Ill. Rev. Stat. 1971, ch. 122, par. 18-8.) During the years in question the section included provisions for school aid "equalization quotas" which, subject to certain percentage increases and other adjustments, are amounts provided by the State to supplement local tax levies to a level of $520 per pupil in average daily attendance. Stated briefly, a school district which levies a sum for educational purposes at least

equivalent to a specified percentage of the value of all its taxable property as equalized or assessed by the Department of Local Government Affairs on the date of the levy is entitled to receive a grant from the common school fund in an amount which, when added to the amount of the levy at the specified minimum percentage, will produce the sum of $520 per pupil in average daily attendance. Accordingly, it is apparent that as a county's equalized assessed valuation becomes larger, the minimum amount which must be levied for educational purposes in order to qualify for State assistance must also increase, with the consequence that the amount received from the common school fund will be correspondingly smaller.

In Count I of the amended complaint plaintiff alleged that during the year 1972 the Director of the Department of Local Government Affairs was responsible for the computation, determination and certification of the multiplier for the several counties in the State; defendant Michael J. Bakalis, as Superintendent of Public Instruction of the State, was responsible for the administration of the common school fund and its apportionment among the various school districts in Illinois; that the multipliers determined by the Director were used to compute "total equalized assessed valuation" for purposes of determining the qualification and appropriate share of the common school fund for each school district; that the Director had either intentionally or negligently failed to correctly compute, determine and certify the multiplier for Cook County as provided by statute but had instead intentionally or negligently overstated it as a consequence of which school districts in Cook County, including the Chicago Board of Education, had not received in the past, and would not receive in the future, their correct and lawful distributive shares of the common school fund; that such overstatement resulted in increased taxes for taxpayers in Cook County; and that such conduct was contrary not only to provisions of the Revenue Act requiring uniform and accurate determination of multipliers, but was also violative

of provisions of the State and Federal constitutions guaranteeing equal protection of laws and uniformity of taxation. Plaintiff sought a recomputation, determination and certification of the multipliers for 1970, 1971 and future years and a recomputation of the corrected distributive shares of the common school fund for school districts in Cook County for the years 1969, 1970 and 1971.

Count II contained essentially the same allegations as Count I and sought to enjoin the acting Director of the Department of Local Government Affairs from certifying the 1972 multiplier for Cook County and to enjoin the Superintendent of Public Instruction from computing State school aid for Cook County school districts on the basis of equalized assessed valuations determined by use of that multiplier.

Plaintiffs' amended complaint was filed on April 2, 1973. The request for preliminary injunction was, over plaintiff's objection, set for hearing on April 9. Between April 2 and April 9 the Department certified the 1972 multiplier, and plaintiff accordingly requested that the Court enter an order recalling the multiplier and directing its recomputation.

At the hearing on the motion there was testimony concerning the procedures of the Department of Local Government Affairs in assigning multipliers for the years 1970 through 1972 in the quadrant and nonquadrant counties. Those few counties such as Cook, which are divided into quadrants for assessment purposes, each received an annual adjustment of its multiplier as one quadrant was reassessed each year. Multipliers were determined for all other counties every four years on the basis of the quadrennial assessments until the enactment of Public Act 77-556, approved July 31, 1971 (Laws of 1971, at 1159), which amended several sections of the Revenue Act to provide for annual equalization of all counties. The testimony indicated that the Department calculated multipliers for each county by use of a formula the nature of which is not clearly shown by the record.

The year 1970 was the quadrennial reassessment year for counties having a commission form of government. In developing tentative multpliers for these counties, the Department first utilized a constant in its formula which, it is said, would have brought the equalized assessed valuations to the 50% level required by statute. However, pursuant to a departmental directive that equalization rates were not to be increased more than 20% over the previous year, a different constant was ultimately arrived at, resulting in equalized assessed valuations at 43.48% of actual value in most of the commission counties. The original constant was used only for Cook, Monroe and Wabash Counties.

A similar situation existed with respect to the determination of 1971 multipliers for the township counties which received their quadrennial reassessment that year. In response to instructions not to increase multipliers by more than 20% over the immediately proceding year, one constant was finally arrived at for most of the township counties and a higher constant for others which resulted in equalization of 45.04% or less of actual value. Only Cook and Lawrence Counties were equalized that year using the original constant in the formula.

On February 21, 1973, the Governor issued a press release announcing that he had ordered multipliers frozen at the current level, and the 1972 multipliers were accordingly certified by the Department at the same level as 1971 rates. The same lack of uniformity among counties conceded by the witnesses to exist with respect to prior years was thus carried forward into the 1972 equalized assessed valuations.

The net result for the years in question is perhaps typified by the year 1971, in which the equalized assessed valuation in Cook County remained at approximately 50% of fair cash values, while such valuations in the rest of the counties ranged from a high of 53.23% in Du Page County to a low of 36.01% in Effingham County.

In its April 23, 1973, denial of plaintiff's motion for preliminary injunction, the trial court made certain findings, including the following: There was a lack of uniformity among the counties in the multipliers assigned by the Department of Local Government Affairs; it would take at least one week for the Department to recompute and recertify the 1972 rates; at that time the county clerk of Cook County was processing the current real estate tax bills on the basis of the 1972 multiplier it had recently received; based on the delayed schedule then in effect the deadline for payment of the first installment of 1972 taxes had been deferred to June 30; approximately 54 days were needed between the receipt of the multiplier and the issuance of all tax bills; the various taxing districts in Cook County had approximately $26,500,000 in tax anticipation warrants outstanding; the Chicago Board of Education operated for tax purposes on a pegged levy and was then at the maximum so that a reduction in the multiplier would reduce the equalized assessed valuation resulting in a reduction of tax revenue for that body; and any recomputed 1972 rate would not interfere with or delay the Superintendent of Public Instruction in determining distributive shares of any school district in the common school fund. The trial court concluded that notwithstanding an apparent "manipulation" in computing the multipliers by the Department of Local Government Affairs, the plaintiff had "failed to establish by clear and convincing evidence how the Chicago Board of Education or any Cook County School District would be actually aided by granting the relief requested when taking into consideration and balancing the same against the effect of (1) reduction of the equalized assessed valuations, and (2) a delay in the tax bills, and (3) need for use and cost of tax anticipation warrants." His memorandum further stated that "in this Court's opinion directing the Director Kirk to recall and recompute the multiplier as beneficial as that may be, is overcome by the chaos that could result to the various taxing bodies, and the cost to the public by the delay in the receipt of tax income." We agree that the preliminary injunction was properly denied.

In his order allowing defendants' motion to dismiss the amended complaint the trial judge stated: "The court finds that the Amended Complaint and Bill of Particulars admit that at all times relevant to the Amended Complaint, the assessment of real property in Cook County was equalized at 50% of fair cash value; that Section 1(24) of the Revenue Act of 1939, Ill. Rev. Stats. Chap. 120, par. 482(24) requires that the assessment of real property be equalized for taxation at 50% of fair cash value; that Section 18—8 of the School Code, Ill. Rev. Stats. Chap. 122, par. 18—8 provides that the equalization quotas for State aid to schools be calculated upon the value of taxable property as equalized; that for purposes of the Motion, taking all well pleaded allegations in the Amended Complaint as being true, it is apparent that there has been no illegal overassessment after equalization in Cook County, but to the contrary, that the assessment of real property in Cook County as equalized is in conformity with and not in violation of the Revenue Act of 1939; that taxes have been extended and tax bills issued upon the Cook County assessment as equalized; that the Court does not have jurisdiction or authority in law to grant the relief prayed for in the Amended Complaint."

On this appeal plaintiff reasserts her contention that there should be a remedy for the alleged discriminatory method of computing the Cook County multiplier which resulted in school districts in that county receiving less than their fair share of school aid from the common school fund. She does not seek a refund of taxes, or the use of a recomputed multiplier for taxing purposes. She argues, instead, that an appropriate method of correcting the alleged inequities which have resulted would be to recompute the multiplier for Cook County for the years in question on the same basis as other counties and then redetermine the amount of State school aid Cook County school districts should have received. As to years in which school aid had already been paid, the relief would presumably involve a direction to the legislature to appropriate extra funds to be paid to Cook County school

districts from the common school fund to adjust for past underpayments. With respect to years as to which final payment from the common school fund had not yet been made, the remedy would be to order that the distributive share of Cook County school districts in the common school fund be redetermined on the basis of the corrected equalized assessed valuation. In both instances the additional payments to the school districts from the common school fund would theoretically inure to the benefit of Cook County taxpayers by lowering future real estate taxes.

We agree with plaintiff that there is no apparent justification for the utter disregard by the Department of Local Government Affairs of the statutory mandate to equalize assessments in all counties at 50% of fair cash value. We do not, however, agree that it would be feasible to attempt to rectify that error in the manner suggested by plaintiff in the circumstances of this case. (*People ex rel. Hamer* v. *Jones* (1968), 39 Ill.2d 360.) While we are here concerned only with Cook County, it is clear that every county in this State which is entitled to assistance from the common school fund, excepting only the one with the lowest equalized assessed valuation, has suffered from the same basic inequity in degrees varying with the differences in valuation. That inequity is accentuated in this case by the fact that Cook County contains roughly one-half the total population of the State. We note, too, generally speaking, that it is the more heavily populated counties in the State which are in the higher range of equalized assessed property valuations. In our opinion, however, it would be completely inappropriate to direct the Superintendent of Public Instruction to distribute school aid in a manner contrary to law in order to remedy the mistakes of other governmental departments which have ignored the law. Furthermore, to utilize one multiplier for purposes of taxation and a different one for other purposes, such as computing State school aid as urged by plaintiff, does nothing to resolve the fundamental problem, which is the failure of both local and State assessing authorities to

implement the statutory system for property assessments designed to achieve uniform equalized assessments among the counties at 50% of actual value. Nor does plaintiff's remedy alleviate similar problems in other areas, such as public aid, arising from this nonfeasance. While not of major significance in the context taxpayers in those few counties wth equalized assessed valuations higher than Cook to contribute portions of their sales and income tax payments (the sources of the common school fund) to make up the amount plaintiff claims due in Cook County school districts.

The problems presented by this case are the direct result of the failure of governmental officials to perform their duties in the manner prescribed by law. As we indicated in *People ex rel. Hamer* v. *Jones* (1968), 39 Ill.2d 360, 372, these problems "do not readily lend themselves to judicial solution," and, as the trial court here indicated in denying the preliminary injunction, the remedies sought may cause such additional difficulty, delay and expense as to make their use impractical. That, in our judgment, is true here as to past years.

As to equalized, assessed valuations for 1975 taxes, payable in 1976, a different situation exists. As to them our judgment in *Hamer* v. *Lehnhausen* (1975), 60 Ill.2d 400, should prove dispositive and eliminate inequities in future years.

For the reasons above stated the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

APPENDIX B

Opinion of the Circuit Court of Cook County Dismissing the Complaint

[CAPTION]

ORDER

This cause coming on to be heard on Defendants' Motion to Dismiss the amended complaint, and the parties being represented by counsel, and the court hearing argument and being fully informed in the premises:

The court finds that the Amended Complaint and Bill of Particulars admit that at all times relevant to the Amended Complaint, the assessment of real property in Cook County was equalized for taxation at 50% of fair cash value; that Section 1(24) of the Revenue Act of 1939, Ill.Rev.Stats. Chap. 120, §482(24) requires that the assessment of real property be equalized for taxation at 50% of fair cash value; that section 18-8 of the School code, Ill.Rev.Stats. Chap. 122, §18-8 provides that equalization quotas for State aid to schools be calculated upon the value of taxable property as equalized; that for purposes of the Motion, taking all well pleaded allegations in the Amended Complaint as being true, it is apparent that there has been no illegal overassessment after equalization in Cook County, but to the contrary, that the assessment of real property in Cook County as equalized is in conformity with and not in violation of the Revenue Act of 1939; that taxes have been extended and tax bills issued upon the Cook County assessment as equalized; that the court does not have jurisdiction or authority in law to grant the relief prayed for in the Amended Complaint.

It is therefore Ordered that the Motion to Dismiss the Amended Complaint be and same hereby sustained, and judgment entered in favor of defendants and against Plaintiff and that Plaintiff take nothing by her action and defendants go hence without day.

Judge F. Emmett Morrissey
July 17, 1973
Circuit Court

APPENDIX C

Opinion of the Circuit Court of Cook County Denying Plaintiff's Motion for Preliminary Injunction

[CAPTION]

MEMORANDUM—ORDER

SUMMARY OF PLEADING AND PROCEEDINGS

"Frank A. Kirk, successor to Lehnhausen, had or was about to determine and certify the equalization rate for the County of Cook, and that said rate will be overstated. Plaintiff sought to enjoin Kirk from certifying said rate.

Over objection of the Defendants the Court set the matter for hearing on April 9th.

The matter proceeded to a hearing on that date based only upon Plaintiff's amended complaint and motion for preliminary injunction.

During the interim between April 2nd and April 9th, Defendant Kirk did certify said rate to the County Clerk of Cook County and elsewhere in the State. The Plaintiff is now asking that the Court recall said certified rates and recompute same.

Plaintiff also asks that Defendant Michael J. Bakalis, Superintendent of Public Instruction for the State of Illinois be enjoined from determining the distributive shares of any school district in the common school fund based on the said certified rates.

Based on the aforesaid proceedings, the evidence of the witnesses, all exhibits, and arguments of Counsel, the Court does hereby find as follows:

1. Plaintiff is a resident and citizen and taxpayer of the City of Chicago, County of Cook, and adequately represents the interest of all members of her class

in this action involving public questions of great importance.

2. In computing the equalization rates for the year 1971 and prior thereto, the Department of Local Government Affairs used as one of the essential components an element labeled a "constant." The purpose of the constant is to produce a uniform result. The evidence established that a constant of two is the ideal. No statute, department regulations or criteria is or has been promulgated as to which constant to use.

   The evidence further established that at the discretion and direction of the Director Lehnhausen for the year 1971 and prior thereto, higher constants were used for certain counties. The use of the higher constant in the formula produces a lower multiplier for such counties. This results in a lack of uniformity in the equalization rates.

3. Director Kirk succeeded Lehnhausen in January of 1973. He testified that based upon his studies there were wide variations in previous years equalization rates; that studies and changes had to be made. That legislative help might be needed and that it would take six to twelve months to effect changes.

4. On February 21, 1973, Governor Dan Walker ordered the multipliers to be used for 1972 frozen on the 1971 basis pending a review of the entire subject.

5. Director Kirk certified the 1972 rates based on the 1971 computations.

6. It would take at least one week for the Department of Local Government Affairs to recompute and recertify the 1972 rates.

7. At the present time the County Clerk of Cook County having received the 1972 equalization rates is processing the current real estate tax bills. Based upon

the present schedule the first installment of the 1972 tax bill has been deferred to and must be paid on or before June 30th. That approximately 54 days are needed between the receipt of the multiplier and issuance of all tax bills.

8. As of March 28, 1973, various taxing districts in the County of Cook had outstanding approximately $26,500,000 in tax anticipation warrants.

9. The Chicago Board of Education operates for tax purposes on a pegged levy. That said Board is presently at the maximum of said pegged levy. A reduction in the multiplier would reduce the equalized assessed valuation resulting in a reduction of tax revenue for the Chicago Board of Education.

10. Any re-computed 1972 rate would not interfere with or delay the Defendant Bakalis in determining the distributive shares of any school district in the common school fund.

It is generally held that before a preliminary injunction may be issued Plaintiff must establish:

1. Probable ultimate success of its case in chief;
2. Immediate certain injury;
3. Grant of relief would outweigh any possible injury to the parties enjoined.

The courts have set forth the various principles which must be considered. They are as follows:

A. It is not the purpose of a preliminary injunction to determine any controverted rights or decide the merits of a case.

B. Injunctions should not be granted where it has the effect of granting all the relief prayed for by Plaintiff without a hearing on the merits.

C. Mandatory injunctions—such as directing the Director to re-compute and re-certify the 1972 rate—should only be issued on the clearest possible grounds.

In *John Deere Co. of Moline* v. *Hendricks,* 36 Ill. App. 2nd 255, the Court said:

> "It is not the function of a temporary injunction to compel a defendant to undo what he has already done, and a mandatory injunction is an extraordinary remedial process which commands performance of some positive act, and is not regarded with judicial favor."
>
> Also see: 21 Ill. Law and Practice Injunctions, Section 3 and 4 *City of Monmouth* v. *Payes,* 39 Ill.App. 2nd 32.

Plaintiff's evidence clearly and strongly suggests that Defendant Lenhausen's computation for 1971 and 1970 were manipulated at his discretion. On the other hand, Plaintiff has failed to establish by clear and convincing evidence how the Chicago Board of Education or any Cook County School District would be actually aided by granting the relief requested when taking into consideration and balancing the same against the effect of (1) reduction of the equalized assessed valuations, and (2) a delay in the tax bills, and (3) need for use and cost of tax anticipation warrants.

The Court must consider the equitable doctrine of balancing equities. Also to be considered is the effect the granting of said relief would have on the public.

> In *People ex rel Valty* v. *Met Disposal Co.,* 345 Ill. App. 570, the Court said:
>
> "No injunction should be granted when the issuance will cause serious public inconvenience without corresponding great advantage to complainant."
>
> Also see: *Ames* v. *Schlager,* 386 Ill. 160.

The Supreme Court of Illinois said in *People ex rel Hansen* v. *Jones*, 39 Ill. 2nd 360, 372:

"The property tax is far from a perfect or even a satisfactory solution to the problem of providing revenue on an equitable basis."

• • •

"The intricacies of the problem do not readily lend themselves to judicial solutions."

In this Court's opinion directing the Director Kirk to recall and recompute the multiplier as beneficial as that may be, is overcome by the chaos that could result to the various taxing bodies, and the cost to the public by the delay in the receipt of tax income.

Governor Walker and Director Kirk have indicated this problem is under study. The Court believes this is a matter that the executive and legislative branches of the government could and should concern themselves with.

For these reasons the Court denies in its entirety the Plaintiff's petition for preliminary injunction. You can prepare an order accordingly.

Mr. Harte: If I understand, it does not reach the other prayers for relief on a recomputation as the case goes ahead, is that correct?

The Court: That is right.

Mr. Harte: The Court does not reach that question."

APPENDIX D

Memorandum, Dept. of Local Gov't Affairs, January 23, 1973

EXHIBIT # 6

January 23, 1973

1970 COMMISSION COUNTIES:

In determining tentative equalization factors for commission counties in their quadrennial reassessment year in 1970, the Department used an average of its single year weighted average ratios for the years 1966, 1967 and 1968. These weighted ratios were developed from our annual analyses of real estate sales in each county and the use of the median ratios developed therefrom in determining the computed full value of real estate for each county of the State. The average of the three year single weighted average ratios was multipled by a constant of 2 thereby certifying tentative equalization factors at a level of 50%.

Subsequent to the certification of tentative factors for the commission counties in 1970, a directive was issued by the Director of the Department to the effect that no final factor certified for commission counties in 1970 was to produce an increase in multiplier in excess of 20% over that of the immediately prior year. To meet this requirement, we developed a constant of 2.3 instead of the 2 which had formerly been used for a number of years during the time we were equalizing assessments at a 50% level. The adoption of a constant 2.3 reduced the level by which assessments were being equalized to approximately 43.5%.

The above mentioned procedure was used in arriving at equalization factors for Alexander, Menard, Morgan, Perry, Scott and Williamson Counties. In Calhoun, Ed-

wards, Johnson, Massac, Pope, Pulaski, Randolph and Union Counties, equalization factors were certified which produced a multiplier no greater than 20% over the immediately prior year although these factors required the use of a higher constant than the 2.3 as mentioned for the counties in the foregoing paragraph. In several instances, the final factors for these counties were certified at amounts requested by the Director. In two of the commission counties (i.e. Monroe and Wabash) the county supervisors of assessments raised values sufficiently in the quadrennial year 1970 to qualify for an equalization of 100% and a multiplier of 1.0000 with the assessment level of these counties being retained at a level of 50%. These counties were, therefore, equalized at a 50% level as compared to those equalized at approximately 43½% and a lesser level for certain of the other commission counties.

Although the Department's duty is that of equalizing assessment levels between counties, it is apparent from the foregoing that the procedures used in determining equalization factors for commission counties in 1970 did not produce inter-county uniformity in the assessment.

1971 TOWNSHIP COUNTIES:

Township counties were quadrennially reassessed on their real estate in 1971. In preparation of the Department's findings based on its real estate sales analyses, the single year weighted average ratios for the years 1966, 1967 and 1968 were again used thereby assuring that the same year's sales data were used in determination of assessment levels for township counties as that used in 1970 for commission counties.

In determination of equalization factors for township counties, the Department computed the average level of assessment by applying a constant of 2 to the average of the year weighted average ratios for 1966, 1967 and 1968. However, this procedure produced a factor in most cases which required a multiplier considerably in excess of 20% over the immediately prior year. Because of this

fact, we were requested, in determining tentative equalization factors for township counties, to keep all tentative factors up to a level which would produce a multiplier no greater than 25% over the immediately prior year. For instance, in Shelby County, the application of a constant of 2 to the average of the single weighted ratios for 1966, 1967 and 1968 produced a factor of 43% (i.e., 21.54% × 2 = 43.08%). In certifying the tentative factor for this County, a factor of 48% (multiplier 2.0833) was used and his multiplier was within the 25% limitation when compared with the immediately prior year.

In determining final factors for township counties, the increase in multiplier over the immediately prior year was restricted to no more than 20% as compared to the 25% used in determining tentative factors. Even though there was absolutely no change in assessments by boards of review, the final factor certified for a number of the counties was different than the tentative. In Shelby County, the final factor was certified at 50% thereby reducing the multiplier from 2.0833 as called for on the tentative factor to the multiplier of 2.0000 on the final factor. In a number of counties, the procedure outlined above would not produce the factor desired by the Department and we were instructed to meet the requirements of no multiplier exceeding 20% over the prior year. It will also be noted that in some cases, the final factors for certain of the township counties were computed at a 50% level. An example of such an instance can be found in Lawrence County.

Based on the foregoing, it becomes evident that the procedures followed by the Department in determining factors for township counties in the assessment year 1971 did not produce inter-county uniformity in assessment levels. In some counties receiving in excess of 100% and negative multipliers, the factor as certified was below that computed for these counties. In several counties of the State, we were ordered to prepare factors for which there was no method given for adjustment of assessment levels to account for the factors certified in these counties.

Inasmuch as State grants in aid for schools, grants in aid for public assistance, as well as certain other grants are based on qualifying rates, it is imperative that the assessment levels in each county be at nearly the same level as possible if these qualifying rates which, when applied to the equalized value based on the factor certified by the Department, are to be as meaningful in one county as in another county in the State.

APPENDIX E

Press Release From The Office of Governor Dan Walker, February 21, 1973

Chicago, Feb. 21—Gov. Dan Walker today (Wednesday) ordered the statewide real estate tax multiplier frozen at the current level, pending legislative review and possible criminal investigation.

The freeze should help hold real estate taxes at their present levels in a number of counties, provided the local communities exercise fiscal restraint, Walker said.

Walker made the announcement at a news conference in the State of Illinois Building, 160 N. LaSalle St., Chicago.

Walker took the action after an intensive investigation by Frank Kirk, director of the Department of Local Government Affairs. Among the taxpayers hardest hit by the manipulation of the multiplier, the investigation showed, are those living in DuPage County.

The findings of the investigation will be turned over to Cook County State's Attorney Bernard Carey who has jurisdiction in the matter.

The tax multiplier was designed to equalize real estate assessments throughout the state at 50 per cent of the fair market value.

Walker said:

"The principle of uniformity of assessments has been violated. Even more disturbing, we have found that public records have been altered. These altered records deal with procedures used to compute the tentative multipliers for each county.

"In one case, even the calculations were removed from the work sheets. As a result, instead of equalized tax

assessments at 50 per cent of their fair market value, we have found assessments as low as 36.01 per cent.

"This is a very serious matter. What we have here are willful manipulations to torpedo a basic law and the spirit of equity in taxation. There is rank favoritism on one hand and cynical disregard for the rights and fair treatment of honest, hardworking citizens on the other.

"I am calling on Cook County State's Attorney Bernard Carey to investigate because the records and computations are made in the financial affairs section of the Department of Local Government Affairs which is located in the State of Illinois Building, 160 N. La Salle Street, Chicago.

"Chapter 38, Section 32-8 says 'A person who knowingly and without lawful authority alters, destroys, defaces, removes, or conceals any public record commits a class 4 felony (punishable by one to three years imprisonment and a $10,000 fine.)'

"In DuPage County, the taxpayers have been stuck with the highest rate in the state—53.23 of fair market value. The DuPage County Board should investigate this situation. The Department of Local Government Affairs in the previous administration should not have tolerated this.

"The high multiplier is one reason why the residents of DuPage County are paying increased real estate taxes.

"If a resident of Glendale Heights in DuPage County only paid at the rate of 50 per cent of the fair market value, a home with an assessed valuation of $20,000 would require payment of $1,545 in real estate taxes. Instead he pays $1645 in real estate taxes.

"Statewide, the range of assessment levels is from 36.01 to 53.23 per cent of fair market value.

"To bring all counties immediately to the 50 per cent level would have grave consequences in terms of state aid to schools and real estate taxes.

"I believe the General Assembly should decide what should be done about this inequitable situation."

By freezing the multiplier, the inequities will not be magnified, Walker explained. The rest of the job of holding the line on taxes for assessments and rates will depend on local officials, he added.

In addition to the freeze, and the requests for investigation, Gov. Walker has ordered the following steps be taken:

1. The culpability of persons who engage in altering the public records in the Department of Local Government Affairs should be determined and appropriate action taken;

2. In accordance with the recommendation of the Kissel report, the equalization process records of the Department of Local Government Affairs will be made available for public inspection immediately;

3. The Department of Local Government Affairs will prepare and publish rules and regulations governing the multiplier. Such regulations do not now exist.

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-253

CLARE HARTE, [illegible] on behalf of all [illegible] and taxpayers of Cook County, Illinois,

Plaintiff-Petitioner,

vs.

ROBERT J. LEHNEN, Former Director of the Department of Local Government Affairs, State of Illinois; MICHAEL J. BAKALIS, Superintendent of Public Instruction of the State of Illinois; and FRANK A. KIRK, Director of the Department of Local Government Affairs, State of Illinois,

Defendants-Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Printed by Authority of the State of Illinois — 3-74 — 2M6

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-253

CLARE HARTE, on her own behalf and on behalf of all citizens and taxpayers of Cook County, Illinois,

Plaintiff-Petitioner,

vs.

ROBERT J. LEHNHAUSEN, Former Director of the Department of Local Government Affairs, State of Illinois; MICHAEL J. BAKALIS, Superintendent of Public Instruction, State of Illinois; and FRANK A. KIRK, Director of the Department of Local Government Affairs, State of Illinois,

Defendants-Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FRANK A. KIRK, Director of the Department of Local Government Affairs and DR. JOSEPH M. CRONIN, State Superintendent of Education, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, file this brief in opposition to the Petition for Writ of Certiorari to the Supreme Court of Illinois.

OPINIONS BELOW

The opinion reported at 60 Ill. 2d 542, 328 N.E. 2d 543 is one of a series of interrelated cases decided by the Supreme Court, or now pending before the Illinois courts, involving the implementation of full value property assessment, classification of real property and intra and inter-county equalization. Two of these related cases are reported at 58 Ill. 2d 266, 319 N.E. 2d 55 and 60 Ill. 2d 400, 328 N.E. 2d 11.

QUESTION PRESENTED

Whether it is an abuse of judicial discretion to order the prospective remedy of a long standing problem and to reject non-statutory, burdensome and impractical proposals for retroactive relief.

STATEMENT OF THE CASE

The Illinois Supreme Court held:

> "In our opinion, however, it would be completely inappropriate to direct the Superintendent of Public Instruction to distribute school aid in a manner contrary to law in order to remedy the mistakes of other governmental departments which have ignored the law. Furthermore, to utilize one multiplier for purposes of taxation and a different one for other purposes, such as computing State school aid as urged by [petitioner] does nothing to resolve the fundamental problem, which is the failure of both local and State assessing authorities to implement the statutory system for property assessments designed to achieve uniform equalized assessments among the counties at 50% of actual value. Nor does [petitioner's] remedy alleviate similar problems in other areas, such as public aid, arising from this nonfeasance. While not of major significance in the context of this case, adoption of [petitioner's] suggested remedy would compel taxpayers in those few counties with equalized assessed valuations higher than Cook to contribute portions of their sales and income tax payments (the sources of the common school fund) to make up the amount [petitioner] claims due in Cook County school districts.
>
> The problems presented by this case are the direct result of the failure of governmental officials to perform their duties in the manner prescribed by law. As we indicated in *People ex rel. Hamer* v. *Jones* (1968), 39 Ill. 2d 360, 372, these problems "do not readily lend themselves to judicial solution," and, as the trial court here indicated in denying the preliminary injunction, the remedies sought may cause such additional difficulty, delay and expense as to make their use impracti-

cal. That, in our judgment, is true here as to past years.

As to equalized, assessed valuations for 1975 taxes, payable in 1976, a different situation exists. As to them our judgment in *Hamer* v. *Lehnhausen* (1975), 60 Ill. 2d 400, should prove dispositive and eliminate inequities in future years."

REASONS FOR DENYING THE WRIT

I

The Illinois public school system (as most other services provided by local governmental units) is supported by a tax on the real property located within the local taxing body. (Ill. Rev. Stats. 1973, Chap. 122, § 10-20.3, § 17-2) Each school district (and all other local governmental units) adopts an annual budget, and authorizes a tax levy to meet the district's needs as provided in the budget. (Ill. Rev. Stats. 1973, Chap. 122, § 17-1, § 34-43, 34-44, 34-53) The capacity of the taxing body to raise revenue by a levy is directly related to the total value of its taxable property as equalized. [See e.g. *Serrano* v. *Priest*, 96 Cal. Reptr. 601, 487 P. 2d 1241 (1971); *Rodiguez* v. *San Antonio Independent School District*, 337 F. Supp. 280 (W.D. Texas, 1971), rev. 411 U.S. 1, 96 S. Ct. 1278 (1973)]

The taxing capacity of school districts is enlarged by increases in aggregate assessed valuation, and diminished by decreases. Indeed, the School Code was amended in 1972 (Ill. Rev. Stats., 1973, Chap., 122, §34-44.1) to authorize the Chicago school district to adopt a supplementary budget for the use of added potential revenues when the value of taxable property in the school district is increased by the establishment of a new and higher equalization multiplier.

However, it is the magnitude of the budget and tax levy when extended to individual parcels of real estate, not level of assessment, which determines the actual tax to be collected from each taxpayer.

To encourage a state-wide foundation level of expenditures for public education, when a school district has levied taxes upon itself at prescribed minimum qualifying rates, the School Code provides for an "equalization quota" from the State common school fund to supplement the

district levy so as to produce the sum of $520 per pupil in average daily attendance. (Ill. Rev. Stats. 1973, Chap. 122, § 18-8)

No school district receives the "equalization quota" except as its local taxing effort at the qualifying rate fails to produce $520 per pupil. Some districts tax themselves at less than the qualifying rate and receive no "equalization quota" at all. Most districts tax themselves in excess of the qualifying rate to enable education expenditures in excess of $520 per pupil. The Chicago school district taxes itself at the maximum statutory limit.

Since computation of any State supplement is interrelated with the value of taxable property as equalized by the Department of Local Government Affairs, as revenues produced at the qualifying tax rate decline, the amount of State supplement necessary to produce $520 per pupil increases.

For most Cook County school districts, however, assessment at less than full value as authorized by statute would mean losing approximately $2 in budgeted tax revenue for every $1 gained in State aid.

Consequently, any decrease in the "multiplier" to effect equalization of Cook County real property at less than the statutory 50% of actual value, as petitioner argues, would actually produce unmanageable deficits for the various county school districts unless compensatory tax increases could be enacted.

Moreover, the Revenue Act provides that the equalization factor or "multiplier" is certified to the County Clerk for all taxing purposes, and used to establish taxes to be extended by all the county taxing bodies. (Ill. Rev. Stats. 1973, Chap. 120, § 632, 643; Tr. 545-547) Any change in the "multiplier" intended to produce a reduction in

assessed valuation for school districts would also simultaneously shrink the tax base of all other major taxing bodies and plunge them into unexpected deficits and chaos.

The very issue raised by Petitioner came before the Illinois General Assembly when the Department of Local Government Affairs proposed to reduce the Cook County "multiplier" from the existing 1.59 to 1.48. Strenuous objection was voiced by the school districts and taxing bodies to be affected, and P.A. 78-1097, (Ill. Rev. Stats. 1973 Chap. 120, § 643), effective July 26, 1974, was hurriedly enacted to mandate a freeze of the Cook County multiplier at the higher 1.59 rate certified in 1972.

It should also be noted that, as a consequence of classification, Petitioner's residential property is actually assessed substantially less than the statutory 50% of actual value, and even after equalization remains at a lower level of assessment than identical parcels of residential property in downstate counties.

Non-uniformity is inherent in a classification system, and is recognized and embodied in the 1970 Illinois Constitution [Art. IX, § 4(b)] and amendments to the Revenue Act of 1939 [inter alia, Ill. Rev. Stats. 1973 Chap. 120, § 482(24), § 501 (1)]. In *People ex rel. Kutner* v. *Cullerton,* 58 Ill. 2d 266, 319 N.E. 2d 55, the court found that lack of uniformity per se did not constitute a violation of the due process and equal protection clauses of the constitutions of the United States and Illinois. Moreover, Cook County is accorded special classification under the Revenue Act in many different respects.

II.

In both *People ex rel. Hillison* v. *C.B. & Q. R.R. Co.,* 22 Ill. 2d 88, 102 (1961) and *People ex rel. Kohorst* v. *G.M. & O. R.R. Co.,* 22 Ill. 2d 104, 112 (1961) the allegation had been made that taxpayer's property was assessed

by the Department of Revenue, predecessor to the Department of Local Government Affairs, at 100% of full, fair cash value while locally assessed property, after equalization, was assessed at levels ranging from 38.50% (22 Ill. 2d at 114) to 55% (22 Ill. 2d at 102).

This Court there stated (p. 102):

> "The theory of defendant's tax objection is constructive fraud. Logically, therefore, the measure of recovery should be the amount by which it was 'constructively defrauded' by the failure of the assessing and equalizing authorities to comply with the statutory mandate of assessing and equalizing locally assessed property at its full cash value. This would be the difference between defendant's 1958 taxes and the amount its taxes would have been had locally assessed property been equalized at a level representing 100% of full cash value. Such a measure of recovery is not only more consistent with the theory of constructive fraud, but also involves a less obvious departure from the statutory requirement of full value assessment.
>
> • • •
>
> . . . the departure from the law on the part of the Department of Revenue was not in assessing defendant's property at its full value, but in failing to equalize locally assessed property at its full value."

Because State school aid is a residual grant program, contingent upon the magnitude of local tax collections (Ill. Rev. Stats. 1973 Chap. 122, § 18-8), Petitioner seeks to reassess and re-extend the taxes in 1969 through 1972 in order to claim an increased "equalization quota." If excessive taxes were collected in those years, the taxpayer must be entitled to a refund from the taxing bodies.

It is undisputed by Petitioner that the tax years in dispute are closed and all taxes expended for their budgeted

purposes. In effect, then, Petitioner would have the court go back and attempt to unscramble an egg.

The possibility of a retroactive reassessment was considered in an Attorney General's Opinion, File No. S-404, issued February 16, 1972 to the Department of Local Government Affairs. At page 6 of the opinion, it concludes:

> ". . . you have asked whether the Department has the power to order a reassessment for the year 1970 and prior years on which taxes have been extended and collected. The foregoing statute [Chap. 120, § 621] clearly states that no substitute assessment shall invalidate any prior assessment as to taxes extended thereon. Since the taxes for the year 1970 and prior thereto have already been extended, I am of the opinion that the Department would not have the power to order a reassessment for the year 1970 and prior thereto."

See also *People ex rel. Cannella* v. *City of Chicago,* 7 Ill. 2d 416, 419-420, 131 N.E. 2d 98, 100 (1955); *People ex rel. Town of Cicero* v. *Sweitzer,* 339 Ill. 28, 44, 170 N.E. 728, 734 (1930); *People ex rel. Stettauer* v. *Olsen,* 215 Ill. 620, 624, 74 N.E. 785, 786 (1905).

The law has long been settled that even an illegal tax voluntarily paid cannot be recovered by the person paying it. *Eichman* v. *Anderson,* 23 Ill. App. 2d 329, 333, 162 N.E. 2d 673, 675 (1959); *Davis* v. *Board of Education,* 323 Ill. 281, 282 (1926); *People ex rel. City of Highland Park* v. *McKibbin,* 380 Ill. 447, 452, 44 N.E. 2d 449, 451 (1942). See also, *S.A.S. Co.* v. *Kucharski,* 53 Ill. 2d 139, 142 (1972).

In People ex rel. Eitel v. Lindheimer, 371 Ill. 367, 371, 21 N.E. 2d 318, 320 (1939), this court said :

> ". . . any right to a refund or a credit of taxes is purely of statutory origin, and in the absence of an authoritative statute, taxes voluntarily, though erroneously, paid, cannot be recovered, nor even voluntarily refunded by a county, although there be justice in the claim."

Petitioner makes no allegation that in the years in dispute, taxes were paid under protest as provided by statute. (Chap. 120, § 675, § 716; Chap. 127, § 172)

In *Clarendon Associates* v. *Korzen,* 56 Ill. 2d 101, 106, 108 (1973) the court concluded that, to obtain relief when assessment levels are disputed, the taxes must be paid under protest and objections filed to the application for judgment. Similarly, the court took pains to state in *People ex rel. Hillison* v. *C.B.&Q. R.R. Co.,* 22 Ill. 2d 88, 103 (1961) and *People ex rel. Kohorst* v. *G.M.&O. R.R. Co.,* 22 Ill. 2d 104, 114 (1961), where equalization adjustments were allowed:

> ". . . the amount of recovery is, of course, limited by the amount of the protest."

Since all tax monies belatedly being disputed by Petitioner have been collected and expended, and since no protest payments were made, and no other statutory procedure exists for reassessment or adjustment of past tax years, there can be no retroactive review.

III.

Stripped of its ambiguities, Petitioner has really petitioned the Court to direct payment of millions of dollars from the State common school fund although no statutory authority exists for such a procedure.

Where money claims are involved, the Illinois Court of Claims Act, Section 8(a), Ill. Rev. Stats. 1973, Chap. 37, § 439.8 (a) provides:

> "The Court of Claims shall have exclusive jurisdiction to hear and determine the following matters:
>
> (a) all claims against the State founded upon any law of the State of Illinois, or upon any regulations thereunder by an executive or administrative officer or agency. . . ."

Article VIII, Section 1(b) of the 1970 Constitution of the State of Illinois provides:

> "the State . . . shall make payments from public funds only as authorized by law or ordinance."

The State Controller Act, Section 9, Ill. Rev. Stats. 1973, Chap. 15, § 209 provides:

> "No payment may be made from public funds held by the State Treasurer . . . except by warrant drawn by the Controller and presented by him to the Treasurer . . . No warrant for the payment of money by the State Treasurer may be drawn by the Controller without the presentation of itemized vouchers indicating that the obligation or expenditure is pursuant to law and authorized. . . ."

Petitioner desires remedial and corrective changes to existing statutes.

Only the legislature has the constitutional power to alter the manner in which the common school fund shall be allocated and apportioned, and in the absence of enabling legislation, neither the Court nor Petitioner have discretion to distribute public funds as Petitioner seeks.

By either a public policy or a common sense test, the conclusion to be drawn is the same: if certain school districts outside Cook County have been unjustly enriched due to underassessment, the proper recourse is not an action which ignores the law and wreaks havoc upon the districts which are in compliance with the Revenue Act and School Code.

CONCLUSION

The Illinois Supreme Court has assumed jurisdiction to prospectively resolve the problem of full value assessment and equalization as provided in the Illinois statutes.

The retroactive solution advocated by Petitioner is contrary to law, impractical and would occasion confusion, expense and other inequities. The Illinois Supreme Court has properly exercised its judicial discretion.

Wherefore respondents respectfully pray that the petition for writ of certiorari to the Illinois Supreme Court be denied.

Respectfully submitted,

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No. 75-253

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

CLARE HARTE, on her own behalf and on behalf of all citizens and taxpayers of Cook County, Illinois,

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Defendants-Respondents.

CERTIFICATE OF SERVICE

I, Herbert Lee Caplan, Assistant Attorney General, a member of the Bar of the Supreme Court of the United States, and counsel for the Respondents, hereby certify that I have this 29th day of September, 1975, served three copies of the Brief in Opposition to Petition for Writ of Certiorari upon William J. Harte, Kevin M. Forde, 111 West Washington Street, Chicago, Illinois 60602, by depositing same, first class postage prepaid, in the United States mail chute at 160 North LaSalle, Chicago, Illinois. All parties required to be served here have been served.

HERBERT LEE CAPLAN